WONG SWEE CHIN v. PUBLIC PROSECUTOR

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.) June 10, 1977]

[Kuala Lumpur — Federal Court Criminal Application No. 2 of 1977]

Criminal Law and Procedure — Plea of guilty — Charges under Internal Security Act — Sentenced to death — Application for extension of time to appeal.

The applicant had pleaded guilty to charges of having under his control firearms and ammunitions, offences under the Internal Security Act, 1960. He pleaded guilty and was sentenced to death. He applied for an order that he be granted an extension of time within which to file notice of appeal.

Held: for the application to succeed there must be strong grounds or substantial reasons. In this case there was no merit whatsoever in the application.

FEDERAL COURT.

Jagjit Singh for the applicant.

M. Mahalingam (Deputy Public Prosecutor) for the respondent.

Gill C.J. (Malaya) (delivering the judgment of the Court): The applicant made an application to this court by way of notice of motion for an order that he be granted an extension of time from the 21st day of January 1977 within which to file a notice of appeal to this court, in respect of Selangor Criminal Trial No. 25 of 1976 in which he was charged with the following offences:—

"(1) That you on February 16, 1976 at about 8.45 p.m. at the office of Eng Leong Sawmill, No. 572, 3½ miles Ipoh Road, Kuala Lumpur, in the Federal Territory of Kuala Lumpur, being a Security area as proclaimed by the Yang di-Pertuan Agong vide P.U. (A) 148 dated May 15, 1969 without lawful excuse and without lawful authority did have under your control firearms to wit,

(i) a 7.65 Walther automatic pistol No. 271053;

(ii) a 9 mm Erfurt 96 automatic luger pistol No. 5796 (18788); and

(iii) a 6.35 Beretta automatic pistol No. E 18866;

and that you have thereby contravened section 57(1)(a) of the Internal Security Act 1960 and punishable under section 57(1) of the said Act.

(2) That you on February 16, 1976 at about 8.45 p.m. at the office of Eng Leong Sawmill, No. 572, 3½ miles Ipoh Road, Kuala Lumpur, in the Federal Territory of Kuala Lumpur, being a Security Area as proclaimed by the Yang di-Pertuan Agong vide P.U. (A) 148 dated May 15, 1969 without lawful excuse and without lawful authority did have under your control ammunitions, to wit,

(i) 41 rounds of 9 mm. ammunitions,

(ii) 34 rounds of .32 ammunitions and

(iii) 2 primed hand-grenades

and that you have thereby contravened section 75(1)(b) of the Internal Security Act 1960 and punishable under section 57(1) of the said Act."

He pleaded guilty to both charges, whereupon he was convicted and sentenced to death by hanging.

The grounds on which he made the application were set out in his affidavit affirmed on March 17, 1977, which may be summarised as follows. He was remanded in Pudu Prison since March 23, 1976. From the very first day of remand he had been placed in solitary confinement in a "bilek akhir" which is a cell for condemned prisoners awaiting death by hanging. Furthermore, even though he was severely injured he was not given medical treatment. In fact the conditions were so depressing that he gradually lost the will to live. Subsequently about 3 months after being remanded in solitary confinement, he tried to commit suicide by hanging from his medical bandages, but was unsuccessful because the prison guards discovered him in time. He was already unconscious at that time. In his highly depressed state of mind he decided that he might as well plead guilty and die soon. He had no more will to live and wanted to die as soon as possible.

For his trial he was assigned a solicitor, Mr. Jagjit Singh, by the High Court. He was very sceptical that his solicitor as counsel would do his best for his case as he had neither personally retained the said solicitor nor was he personally acquainted with the said solicitor. Although the said solicitor visited him a few times in Pudu Gaol before the said trial he was not prepared to give him instructions as he had already made up his mind to plead guilty and die as soon as possible. Furthermore he felt very sure that he would not get a fair trial, with all the adverse publicity given to him by the police in the press over a long period of time in the course of the nation-wide hunt for him for alleged criminal offences, many of which he had never committed but was nevertheless blamed for them.

With a view to opposing the application, the Public Prosecutor, who was the respondent to the application, filed 2 affidavits. The first of these affidavits was by Kenneth James Woodworth an Assistant Superintendent of Police in the Royal Malaysian Police Force. The gist of what this deponent said in his affidavit was that the applicant was injured at the time of his arrest and that the applicant was treated by specialist doctors for such injuries while he was a patient in the General Hospital, Kuala Lumpur from February 16 to March 23, 1976, when he was discharged from hospital and escorted by a party of police to Pudu Gaol Kuala Lumpur. The deponent further stated that on May 10, 1976, August 25, 1976 and September 20, 1976 he and a party of police escorted the applicant from Pudu Prison to General Hospital, Kuala Lumpur for treatment by the orthopaedic unit and on each occasion escorted him back to Pudu Prison.

The second affidavit was by Abdul Aziz bin Haji Idris, the Deputy Superintendent of Pudu Prison Kuala Lumpur. The substance of his affidavit was that the applicant was treated at the prison hospital by a qualified doctor from the General Hospital Kuala Lumpur on 7 separate occasions from July 8 to September 17, 1976, and that the applicant was treated for cough by a qualified hospital assistant at the prison hospital on 3 separate occasions. This deponent further said that from March 23, 1976 to January 11, 1977 the applicant was never kept in 'bilek akhir' but was kept in the maximum security block of Pudu Prison because it was thought that he might make an attempt to escape or commit suicide.

As we have said, the accused was produced in the High Court on the abovementioned two charges on January 11, 1977. The charges were read over and explained to him. He said that he pleaded guilty to both charges and understood the nature and consequences of his plea. He further said that he did not want counsel (Jagjit Singh) who had been assigned

to represent him. At this stage the learned judge asked the accused to reconsider his plea. The learned judge further said that he would give accused further time to think or have another counsel assigned if he so wished. The accused replied that he did not wish to reconsider his plea and that he maintained his plea of guilty. The Deputy Public Prosecutor gave the facts of the case to the court. The applicant said that he admitted the facts and had nothing to say in mitigation. He merely asked for the return of his personal belongings. The learned judge then convicted the applicant on his plea on both charges and passed sentence of death.

Mr. Jagjit Singh appeared before us on behalf of the applicant. He referred to the applicant's affidavit and then said that his strongest ground in support of the application was that the applicant should not have been charged under the Internal Security Act, but should have been charged under the Firearms (Increased Penalties) Act. Counsel for the applicant conceded that the facts of the case and the consequences of the applicant's plea were explained to him but emphasised the applicant's frame of mind when he pleaded guilty to the charges.

Mr. Mahalingam appeared on behalf of the respondent. He said that from the English authorities it was abundantly clear that the Federal Court had inherent jurisdiction to order a retrial where conviction was passed on a plea of guilty which was a nullity. He then submitted that it was for the applicant to show that he tendered his plea of guilty under pressure or threats or in circumstances in which he could make no free choice but was driven to adopt a certain course whether he liked it or not.

The view which we took was that for the application to succeed there had to be strong grounds or substantial reasons. There was nothing to suggest that the applicant did not understand the points in issue when he was produced before the High Court. After he had pleaded guilty he was asked by the learned judge to reconsider his decision. The applicant said that he did not wish to reconsider the matter. The facts of the case were explained to him and he admitted them. There was nothing to suggest that on the merits the appeal was likely to succeed. The sentence which was passed on him was the only sentence which could be passed in the circumstances of the case. On the whole we were satisfied that there was no merit whatsoever in the application. We had therefore no option but to dismiss it.

Application dismissed.

Solicitors: *Jagjit Singh & Co.*

CHAI TZE FOH & ANOR. v. ASIA FISHING INDUSTRY PTE. LTD.

[F.C. (Lee Hun Hoe C.J. (Borneo), Chang Min Tat and Tan Chiaw Thong JJ.) June 13, 1977]

[Kuching — Federal Court Civil Appeal No. 40 of 1976]

Practice and Procedure — Contempt of court — Application for writ of attachment — Contravention of order of court — Burden of proof.

Sale of Goods — F.O.B. Contract — Property does not pass to purchaser at time of contract.

The respondents had applied for a writ of attachment against the appellants. It was alleged that the appellants had interfered with the respondent's use and enjoyment of certain factory premises and that they had removed from the factory premises various cartons of prawns and that both actions were in contravention of an order of the High Court. The learned trial judge gave judgment in favour of the respondents and the appellants appealed.

Held: (1) the order of court in this case was unambiguous and was not rendered ambiguous by the undertaking given by the appellants to operate the factory;

(2) the appellants were in breach in disposing of the prawns. The contract relating to the prawns was an F.O.B. contract and property in the prawns had not passed to the purchaser, as alleged by the appellants;

(3) in refusing to open the factory gate to allow the respondents to enter the premises, the appellants were wilfully disobeying the order;

(4) the learned trial judge had rightly held that the respondents had proved their charges beyond reasonable doubt.

Cases referred to:

(1) *T.O. Thomas* v. *Asia Fishing Industry Pte. Ltd.* [1977] 1 M.L.J. 151.

(2) *Iberian Trust Ltd.* v. *Founders Trust and Investment Company* [1932] 2 K.B. 89, 95.

FEDERAL COURT.

Daniel Tajem for the appellants.

C.T. Wong for the respondents.

Lee Hun Hoe C.J. (Borneo): I have the advantage of reading the judgment of Chang Min Tat J. with which I concur. There is nothing I can usefully add except to say that most of the points taken in *T.O. Thomas* v. *Asia Fishing Industry Pte. Ltd.*[1] have been repeated in this appeal and the same answers apply.

It was in the interest of the parties to keep the factory going to prevent damages to the prawns in the cold room. The defendants gave the undertaking to operate the factory. I agree with Chang Min Tat J. that the undertaking was for the purpose of operating the factory and not for the purpose of running the business. The undertaking did not render the Court Order ambiguous. Further, the Court Order was never suspended and must be obeyed.

Curiously enough the day when the contract for the sale of prawns was purported to be executed coincided with the dismissal of all the staff of plaintiff company. The only way defendants thought they could justify the disposing of the prawns was to contend that the contract was not F.O.B. Therefore, they had done nothing against the Court Order as the property in the prawns had passed to the buyer on the execution of the contract. The contract was before us and was meant, as clear as a pikestaff, to be